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BRIEF OF PLAINTIFF IN ERROR.

(18,387.)

Supreme Court of the United States,

OCTOBER TERM, 1901.

No. 230

WILLIAM L. SNYDER, Executor of David L. Snyder,
Plaintiff in Error,

vs.

BERNARD BETTMAN, Collector,
Defendant in Error.

ERROR TO THE CIRCUIT COURT FOR
THE SOUTHERN DISTRICT OF OHIO.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 534.

WM. L. SNYDER, EXECUTOR OF
DAVID L. SNYDER, DECEASED,
Plaintiff in Error,
vs.
BERNARD BETTMAN, COLLECTOR,
Defendant in Error.

Brief for Plaintiff in Error.

STATEMENT.

The above action was begun in the Circuit Court for the Western Division of the Southern District of Ohio, October 10th, 1899, to recover of the defendant, as Internal Revenue Collector, certain sums paid under protest as inheritance taxes on legacies bequeathed by said David L. Snyder.

After the action was begun the decision of this Court in Knowlton vs. Moore was announced, and thereupon refunders were made to the Executor in accordance with that decision and the Executor, by consent of parties, filed an amended petition eliminating the matters covered by the said decision, in which he states:

That his testator David L. Snyder bequeathed to the City of Springfield, Ohio, (a municipal corporation of said State having power to receive such bequest) $200,000.00 in U. S. Government Bonds, in trust to manage and invest the principal thereof

in such manner as the Laws of Ohio direct, or might direct, in case of guardians of minors, and to use and expend the net income arising from said trust in the maintenance, improvement and beautifying of the public park of said City, known as Snyder Park, including any extensions thereof which said City might otherwise acquire, and that the said bequest had been duly accepted by the said City.

That the defendant as Collector demanded of the plaintiff taxes on account of said bequest under and by virtue of Sections 29, 30 and 31 of the Act of Congress approved June 13th, 1898, and entitled, "An Act to provide ways and means to meet war expenditures, and for other purposes," said taxes so demanded amounting to $27,500.00, being at the rate of 12½ per cent on the value of the legacy, $5,500.00 of which has been refunded by the defendant, who still retains the balance, namely, $22,000.00.

That before payment the Executor duly protested upon the ground hereinafter specified; but his said protest was denied, both by the Collector and by the Commissioner of Internal Revenue to whom the same was referred, and that thereafter on April 20th, 1899, the plaintiff paid under protest the taxes so demanded, and immediately thereafter prepared and submitted to the Commissioner of Internal Revenue, a claim in writing for the refunder of the same upon the ground hereinafter stated, which claim the said Commissioner denied.

That the said sum of $22,000.00 and every part of the same was illegally collected, for the reason that the Congress of the United States has no authority under the Constitution to impose any tax or burden upon the said City of Springfield, nor upon its exercise of the right to take said bequest under the will aforesaid.

A general demurrer was interposed by the defendant to this amended petition, which demurrer was sustained by the Circuit Court; and the plaintiff not desiring to plead further, a final judgment was rendered dismissing the action at the plaintiff's costs, which judgment the plaintiff now seeks to have reversed, assigning as error the sustaining of the defendant's demurrer to his amended petition.

Argument.

The sole question presented by this Record is whether a legacy left by a deceased resident of one of the States by will duly executed and probated in accordance with the Laws of said State, to a municipal corporation of the same State, authorized by its Laws to accept such bequest, of a sum of money the principal of which is to be held and invested and the income used perpetually in the maintenance of a public park in said City, is within the provisions of Sections 29, 30 and 31 of the Act of Congress above referred to.

Our proposition is that the Act in question is an exercise of the taxing power of the Federal Government; that it imposes an excise tax upon its subjects, the people of the United States, for the privilege of succeeding to property by will or under the intestate laws of the respective States; and since the City of Springfield is not a subject of the United States, but a branch of the State sovereignty, it is beyond the taxing power of the Federal Government

Upon the argument of our appeal before the Honorable Commissioner of Internal Revenue, our contention was denied upon the authority of United States against Perkins, 162 U. S. 625, where it was held by this Court that a legacy left to the Federal Government by a citizen of New York was subject to the legacy tax imposed by said State.

The Honorable Commissioner failed to observe that the principle of this decision is that the said State Inheritance Tax was the exercise, not of the power of taxation, but of the broader power of regulating the descent of property and its transmission by will in said State, that the Federal Government took its legacy by favor of the laws of said State regulating a subject of which the state had absolute and exclusive control, and could not accept the benefits and at the same time reject the conditions on which the benefits were granted.

It is quite manifest that the above decision proceeds upon the theory that, if the taxing power only of the State of New York had been involved, the Federal Government would not have been subject to it, as was plainly indicated by this Court in Knowlton vs. Moore, 178 U. S. at page 57.

The learned Circuit Court disposed of our contention in the following language: (Record, page 3, at foot.)

"It is urged in substance that the legacy is property of the City of Springfield devoted to the legitimate purposes of municipal government, and therefore non-taxable. But in view of the Supreme Court of the United States, as expressed in Knowlton vs. Moore, 178 U. S. 41, Plummer vs. Coler, Ibid 115, Murdock vs. Ward, Ibid 139, the tax is not levied upon the legacy, but upon the right to transmit the legacy from the deceased to the City of Springfield, through the agencies provided by the laws of Ohio, and it does not become the property of the City of Springfield until this toll or tax is taken out during the process of transmission. A tax has not been levied upon the property, either as the property of the estate of David L. Snyder, or as the property of the City of Springfield, but a duty or charge has been levied upon the estate of David L. Snyder, for the privilege of transmitting the property to the City of Springfield. This right or privilege of transmission is a subject of taxation within the reach of either the National or State Government."

We beg leave to assert that we do not contend, and never contended that this tax was upon the property. Indeed we have always conceded that the fact that this legacy was in Government 4 per cent Bonds, due in 1907, and which are expressely exempted from all taxation, was of no importance in this inquiry. But we deny that the duty is a charge levied upon the estate of David L. Snyder for the privilege of transmitting the property to the City of Springfield. We insist that the tax in question is a charge upon the legatee for the privilege of succeeding to the property, as stated by this Court in Knowlton vs. Moore, in the following language at page 60 of the report:

"Certainly a tax placed upon an inheritance or legacy diminishes to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the State to regulate."

And upon page 66 the Court says:

"If it (the tax) is deducted from each particular legacy, then it is manifest that the tax imposed will have been levied, not upon the mass of the estate, but upon each particular legatee

or beneficiary, since the share of such person will have paid the rate of taxation predicated upon the amount of the legacy and the relationship, etc."

See also Magoon vs. Illinois Trust & Savings Society, 170 U. S. 283, page 288 and cases cited.

The learned Circuit Judge failed to distinguish between those portions of the opinion in Knowlton vs. Moore which deal with inheritance taxes in general and when levied by sovereigns having power to regulate successions, and those portions of the opinion which deal with the power of the Federal Government to impose such taxes and with the particular Act in question; and, therefore, he failed to discover that two of the points carefully decided in that case are, that the Federal Government has no power to regulate successions, and that tax in question is a burden imposed upon the legatee for the privilege of succession, as distinguished from a probate duty or an estate tax, which is a burden imposed upon the testator's estate for the privilege of probate, or for the right of transmitting.

Plummer vs. Coler, 178 U. S. 115, is of the same class as United States against Perkins, and deals with the power of the State of New York to impose a legacy tax where the legacy consists of United States Bonds exempted from taxation.

In such cases it is quite appropriate to say that the duty is a condition precedent which must be met before the legacy takes effect, and that the legacy does not become the property of the legatee until the toll or tax is paid; but when the tax is levied by a sovereign having no authority to regulate successions or to impose conditions upon the transmission of property by will or under the interstate laws, the expression is absurd; for to impose a toll or duty which must be paid before the intestate laws or the will can operate to transfer the interest, is a regulation of the succession. The difference is in words, not in substance.

We insist that the tax in question is an excise tax levied by the Federal Government upon its subjects, the people of the United States, for the privilege of exercising the right to succeed to property under the laws of the several States.

This is in accord with the elementary principles of taxation. "It is the exaction of money or services from individuals

as and for their respective shares of contribution to any public burden, for the purpose of enabling the Government to execute and discharge its functions."

25 A. & E. Encl. of Law, 12.

It is "a contribution imposed by government on individuals for the services of the State."

Miller on Constitution of the United States, page 235.

"Taxation implies tribute from the governed to some form of sovereignty."

West Hartford vs. Commissioners, 44 Conn. 460.

"Taxation is a charge levied by the sovereign power upon the property of its subjects. It is not a charge upon its own property, nor upon property over which it has no dominion. This excludes the property of the State, whether lands, revenues or other property, and the property of the United States."

People vs. McCreary 34 Cal. 432, page 456.

Quoted with approval by Mr. Justice Gray in Van Brocklin vs. Tenn., 117 U. S. 151.

These elementary propositions have always been applied in cases where a tax upon property was involved, and when the property with reference to which the tax was imposed, was clearly within the jurisdiction of the United States; and we submit their application is even clearer in a case such as this where the tax is upon the individual, and not upon the property; and the right or privilege, for the exercise of which the tax is imposed, is a right or privelege which the Federal Government has no power to regulate.

Since the tax in question applies as well to successions under intestate laws as to successions under wills, and since it is elementary that the States have the authority to regulate and control such successions; suppose the State of Ohio had enacted a law providing that upon the death of every citizen one-third of his personal estate should descend and pass to the State, or to the municipality in which he resided, to be used for public purposes.

Would the Federal Government have authority to impose a tax on account of the portion of the estate so passing?

Instead of making such a compulsory demand upon the estates of decedents, the State of Ohio authorizes them by will to direct any portion of their estates into the course above indicated, and empowers its municipalities to receive such voluntary contributions.

Is any different principle involved?

It is hardly necessary that authorities should be assembled upon the limitations of the taxing power; yet for your honor's convenience we here present a few of them.

In Lane County vs. Oregon, 7th Wallace 71, Mr. Chief Justice Chase speaking on the subject of taxation, says, page 76:

"The people of the United States constitute one nation, under one government and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to a separate and independent existence." * * * * *

"Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a National Government, acting, with ample power *directly upon the citizens*, instead of the Confederate Government, which acted with powers greatly restricted, only upon the States." * * * * *

"The general condition was well expressed by Mr. Madison in the Federalist, thus: The Federal and State governments, are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes."

In Dobbins vs. Erie Co., 16th Pet. 435, it was settled that no State has any power to impose an income tax upon the salary of an officer of the United States.

In Collector vs. Day, 11 Wallace 113, the converse of that proposition was also established, to-wit: The United States has no power to impose an income tax upon the salary of a State officer.

Mr. Justice Nelson delivering the opinion of the Court in the last case, page 124, says:

"The general government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate

sphere is supreme, but the States within the limits of their powers not granted, or, in the language of the tenth amendment 'reserved', are as independent of the general government as that government within its sphere is independent of the States."

After quoting extensively from the opinion of Chief Justice Chase in Lane County vs. Oregon cited supra, Mr. Justice Nelson continues, page 126:

"The supremacy of the general government, therefore, so much relied on in the argument of the Counsel for the Plaintiff in error, in respect to the question before us, cannot be maintained. *The two governments are upon an equality.*"

In U. S. vs. B. & O. R. R. Co., 17th Wallace 322, the question was as to the taxability under Section 122 of the Internal Revenue act of 1862, imposing an income tax, of certain bonds of the B. & O. R. R. Co., which were held by the City of Baltimore.

The Court adjudged, first, that this income tax, while it was required to be paid by the R. R. Co., was a tax, not upon the R. R. Co., but upon the holder of its bonds; and, second, as stated in the language of the second syllabus, "Congress did not intend by the Internal Revenue laws to tax property belonging to the States, or to municipal corporations."

The principle upon which this conclusion was reached is shown in the following portion of the Court's opinion.

"The power of taxation by the Federal Government upon the subjects and in the manner prescribed by the act we are considering, is undoubted. There are, however, certain departments which are excepted from the general power. The right of the States to administer their own affairs through their legislative, executive and judicial departments in their own manner, through their own agencies, is conceded by the uniform decisions of this Court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power *of the Federal Government.* If they may be taxed lightly, they may be taxed heavily, if justly oppressive. Their operation may be impeded and may be destroyed, if any interference is permitted. *Hence the beginning of such taxation is not allowed on the one side, is not claimed on the other.*"

In the case last cited the Court referred at length to Internal Revenue cases where the department itself had uniformly held that the exception of the States and their municipalities must always be inferred.

In Van Brocklin vs. Tennessee, 117th U. S. 151, the question was as to the power of the state government to tax real estate within its limits, the title to which was in the Federal government, having been lawfully acquired by it on a sale to pay taxes, and the Court adjudged that the State had no authority to impose such taxes.

Mr. Justice Gray quoting from Fagan vs. Chicago, 84 Illinois 227, says, page 162:

"Nor under our system of government can the States tax the general government, its agents or property, nor can the general government tax the States, their agents or property.

A municipal corporation has no power to assess or exact from the state or the general government any sum for benefits conferred. *The power to levy taxes, or to impose assessments for benefits, can only be exercised on the governed, and not on the governing power, whether State or Federal.*"

In the recent case of Pollock vs. Trust Co., 157 U. S., one of the grounds upon which the recent Federal income tax law was held invalid was that it sought to impose taxes upon income derived from municipal bonds.

Mr. Chief Justice Fuller announces the opinion of the majority, as follows, page 584:

"As the States cannot tax the powers, the operations or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held the *United States has no power under the Constitution to tax either the instrumentalities or the property of a State.*

"A municipal corporation is the representative of the State and one of the instrumentalities of the State Government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation."

And Mr. Justice Harlan, who upon some of the questions dissented from the conclusions announced by the Chief Justice, upon this point says, pages 653-54:

"While property and the gains, profits and income derived from property belonging to private corporations and individuals

are subjects of taxation for the purpose of paying the debts and providing for the common defence and the general welfare of the United States, the instrumentalities employed by the States in the execution of their powers are not subjects of taxation by the general government any more than the instrumentalities of the United States are the subjects of taxation by the States and any tax imposed directly upon interest derived from bonds issued by a municipal corporation for public purposes under the authority of the state whose instrumentality it is, is a burden upon the exercise of the powers of that corporation which only the State creating it may impose."

"In such a case it is immaterial to inquire whether the tax is in its nature or by its operation a direct or an indirect tax; for the instrumentalities of the States—among which it is well settled are municipal corporations exercising powers and holding property for the benefit of the public—are not subjects of national taxation in any form or for any purpose, while the property of private corporations and of individuals is subject to taxation by the general government for national purposes. So it has been frequently adjudged, and the question is no longer an open one in this Court."

In the act under consideration in the case last referred to, the income of the States, Counties and municipalities was expressly exempted; but a tax on individuals on income derived by them from municipal bonds was held void, by reason of its indirect effect to embarrass or impede municipalities in the exercise of their power to borrow money; while in the case now under consideration, the tax is directly on the municipality imposing a burden on its exercise of the right to succeed to property under the laws of the State which created it.

The City of Springfield has authority to acquire money for park purposes by taxation; it has authority to acquire money for park purposes by borrowing the same and issuing bonds to be met by taxation; and it has authority to acquire money for such purpose by gift inter vivos or by testamentary bequest; and we submit the Federal Government has as much authority to tax it for the exercise of all of these powers, as for the exercise of any one of them.

It may, indeed, be true that the succession or the passing of the legacy is the subject matter or thing with respect to which the tax is imposed; but the municipality is the person upon whom the burden is imposed.

If the Federal Government were to enact another carriage tax, and undertake to subject a municipality to the tax for the privilege of running its police patrol, it could with as much force be argued that the tax was upon the passing of the carriage, and not upon the municipality.

We respectfully submit that while the Federal Government levies taxes with respect to property and to rights and privileges, such taxes are always contributions required by the governing power from the governed; otherwise, in every case, the Federal Government might tax the property of the States under the claim that the tax was upon the property and not upon the State.

An inheritance tax, when levied by a sovereign having no power to regulate successions, must be either upon the testator for the privilege of transmitting the property, or upon the legatee for the privilege of receiving it.

The whole scheme and structure of the act in question, as interpreted by this Court in Knowlton vs. Moore, shows that this tax is a burden levied upon the legatee. The testator is beyond the jurisdiction, and in this case the legatee is also.

Respectfully submitted,

J. E. BOWMAN,

Counsel for Plaintiff in Error.